

Docket No. 1948-4635

REMARKS**Status of the Claims**

Claims 1 - 22 are pending.

Claims 1 - 22 were rejected.

Claims 1, 4, 5, 10, 11, 12, 13, 18, 19, and 20 are amended herein.

Claims 1, 11, 12, 13, and 18 are independent claims.

Interview Summary for Interview of 05/21/03

Applicant's representative, David M. Bruno, and Examiner Josiah Cocks telephonically conferred on May 21, 2003, concerning the merits of the Office Action dated April 21, 2003. The Examiner indicated his belief that none of the claims read over the prior art but that the applicant could distinguish over the prior art by including a claim that includes limitations further defining the structure and function of the lower compartment of the grate and including limitations further defining the structure and function of the pivotal cage member. Applicant noted that the independent claims presented are directed solely to the lower portion of the grate depicted in the figures. That lower portion of the grate is a frame including grate members and cross members that define a platform and a substantially enclosed compartment. The cage member is separately recited in dependent claims and adds additional structure that prevents direct contact between a firelog placed in the compartment and wood or ceramic logs placed on top of the platform. Applicant respectfully submitted that this lower portion of the fireplace grate, as recited in the independent claims is distinguishable from the wire rack of Gerrard.

Agreement on acceptable claim language was not reached, the Examiner noting that additional art search may be required. In further distinguishing the claimed invention from the wire rack of Gerrard, the applicant respectfully submit the following remarks.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 2, 7, 8, 11, 12, and 15-22 were rejected under 35 U.S.C. 103 as obvious over Gerrard (U.S. Patent No. 5,435,295) in view of WEBSTER'S II Riverside University Dictionary (1984). The Office asserts that Gerrard discloses a fireplace grate comprising a frame 1 including a plurality of grate members 5 and cross members 10 11, a base 2, and an upper

Docket No. 1948-4635

frame/cage member 3, having a second plurality of grate members 19 20 and cross members 23 24, wherein the grate members define a compartment/cavity to hold a firelog 34 (see area defined by support members 10 11, and support bars 23 24, and Figs. 2, 4). The Office further asserts that support members extend along the bottom of the compartment and fully support logs placed thereon and the ceramic logs are placed on top of the horizontal support bars and direct contact is prevented between the firelog and the ceramic logs (see Fig. 4).

The Office also asserts that a platform is "a floor or horizontal surface raised above the level of the adjacent area" and that support bars 23 24, are horizontal surfaces that support a ceramic log above the fireplace floor. The Office further alleges support bars 23 24, support members 10 11, and fibre logs 31 32 33, create a substantially enclosed compartment as defined in the applicants figures and specification, in particular Figs. 4A-B and 5A-B.

With respect to claims 2, 7, 8, and 12, the Office respectively asserts that Gerrard includes a base 2 that defines a cavity and includes cage member 3; that additional support bars may be added as desired to provide support for additional firelogs; that a poker positioned in V-notch 28 in front protector bar 27 may be used to open the upper frame/cage member; and that a ceramic log is secured by pins 25 26, to the upper frame/cage member 3, which is attached to the frame 1 by pivot arms 17.

The applicant respectfully traverses the rejection and submits that the structure of the fireplace grate, as claimed, is distinguishable from the cited reference to Gerrard. The application teaches a fireplace grate that isolates a firelog or starter material from a wood or ceramic log. The fireplace grate comprises a frame 102 including a base 110 and an upper cage member 160 or pivotal ceramic logs 24. The grate includes non-moveable grate members and non-moveable cross members fixed in position to define a supporting platform for holding the wood or ceramic logs on the top surface of the platform and to define a substantially enclosed compartment depending from the platform for holding the firelog in isolation. An upper cage member, similarly comprising non-moveable grate members and cross members, or pivotal ceramic logs can be added to further enclose a firelog positioned in the compartment. The independent claims, independent claim 1 being addressed here, are directed solely to the lower portion of the grate (i.e., base) 110 depicted in the figures. Claim 1 does not include the upper cage member 160 nor its constituent elements (see Figure 1) nor a pivotal ceramic log (see Figure 4A)

In sharp contrast with the claim 1 directed solely to a base, the Office relies on both the Gerrard base 2 and upper frame 3 to allege obvious the applicants claimed frame having a lower portion that includes a platform and a compartment depending therefrom, both the platform and compartment comprised of non-moveable grate members and cross members. With a more analogous comparison of the Gerrard base 2 with the base 110 of the instant application, the applicant respectfully submits that these bases are distinguishable and thus, that claim 1 is patentable over the cited reference.

Claim 1 recites a frame 102 including a base 110 formed of non-moveable grate members 112 and non-moveable cross member 114 that define a front portion (i.e., supporting platform) 120 and a rear portion (i.e., supporting platform) 140 for holding wood or ceramic logs. Between the front portion and the rear portion, the non-moveable grate members and non-moveable cross members form a U-shaped, three sided, portion (i.e., compartment) 130 for holding a firelog. See specification page 6, line 9 – page 7, line 18. Thus, the lower portion of the grate includes non-moveable grate members and non-moveable cross members that define a platform and a substantially enclosed compartment. These features of the claimed fireplace grate are similarly illustrated in Figs. 3-5 (base: 310, 410, 510; U-shaped portion 330, 430, 530).

The applicant separately recites a cage member in dependent claims. The cage member adds additional structure that prevents direct contact between a firelog positioned in the compartment and wood or ceramic logs positioned on top of the platform. However, the structure of the cage member is not required to isolate and prevent direct contact between firelogs place in the compartment and wood or ceramic logs place on the top surface of the platform. Accordingly, the Applicant respectfully submits that this lower portion of the illustrated fireplace grate, as recited in the independent claims, is distinguishable from the wire rack of Gerrard, which, as acknowledged by the Office, requires the cooperation of a base and a upper frame to form any semblance of the claimed platform and compartment.

The Office asserts the claimed compartment is obvious in light of a compartment formed by the Gerrard support members 10 11 and support bars 23 24. As explained above, this alleged reading relies on both the Gerard base 2 and upper frame 3 while, applicant's independent claims are directed solely to a frame including non-moveable grate members and non-moveable cross members that form a base defining a platform and compartment. Accordingly, the applicant

respectfully submits that the claimed invention is distinguishable from the cited Gerrard reference.

The Office also asserts that Gerrard support bars 23 24 form a platform that is raised above the surface of the floor. However, in the recitation of claim 1, the frame forms a compartment that depends from a platform, with both the platform and the compartment being formed by non-moveable grate members and cross members. In sharp contrast to Gerrard, the platform forms a surface raised above the compartment, not the floor. In addition, both the platform and the compartment are constituent elements of the base and both are raised above the floor.

Further, the claimed platform and compartment of the base are formed by non-moveable grate members and non-moveable cross members linked together. The combination of the Gerrard base and upper frame alleged by the Office to render applicant's claims obvious requires the moveable interaction of two distinct Gerrard elements, the base and the upper frame.

Moreover, the Gerrard fireplace grate fails to provide the functionality provided by the claimed invention. Wood logs can not logically be placed on the upper support frame of Gerrard in combination with ceramic logs. Gerrard teaches combustible logs are placed on the base. If wood logs to be placed on the top of the upper frame, a host of problems arise: the arrangement would be too tall for most conventional fireplaces; ceramic logs may crack due to excessive heat when placed on wood logs or when wood logs fall on the ceramic logs; pops from natural wood logs could dislodge ceramic logs from the upper frame; wood logs could/would fall from the upper frame as they are consumed and reduce in size. All of these create the unsafe conditions that the claimed invention prevents. Thus, the wire rack of Gerrard fails to teach or suggest the separation and protection of a firelog from wood log that is provided by the applicant's claims.

Gerrard also teaches away from the claimed invention. Gerrard is clear that a firelog is placed on the base of the grate. Additional support members may be added to the base to support a second firelog or firewood. See col. 2, ln. 21. Gerrard indicates that the base alone can be designed as a regular fireplace grate to accommodate paper wrapped firelogs and fire wood. See col. 3, ln. 32. Thus, all logs are place on a single plane as in conventional fireplace grate, which arrangement of firelogs and wood logs creates the unsafe condition that the applicant's claimed fireplace grate prevents. That is, Gerrard permits the direct placement of a firelog in combination with wood logs on the base of a fireplace grate with no protection for the firelog

Docket No. 1948-4635

from natural wood log pops, fireplace tools or the crush of falling logs. Thus, Gerrard is markedly different from the claim grate which provides a base with a platform and a compartment to substantially enclose a firelog on a different plane from other combustible log. Also, for access to the area where firelogs are to be positioned for burning, Gerrard requires that the upper cage member be hinged and then moved during operation. This is a trick and dangerous operation when the fireplace is in use, since ceramic logs on the frame are heated.

For safety and aesthetic reasons, a fireplace grate must support a burning firelog to prevent the firelog from breaking apart and releasing its stored energy in an uncontrolled manner. Accordingly, claim 1 is directed to a fireplace grate having a shaped base forming a platform and a substantially enclosed compartment depending therefrom. Claim 1 recites a fireplace grate comprising a frame including a plurality of non-moveable grate members and a plurality of non-moveable cross members, the non-moveable grate members and non-moveable cross members defining a platform and a substantially enclosed compartment, the compartment operative to hold a firelog and to prevent direct contact between the firelog and wood or ceramic logs placed on top of the platform. Importantly, the claimed grate allows firelogs to be substantially enclosed in the compartment and out of direct contact with wood logs on the platform. Also, additional firelogs may be added to the compartment without moving the positioned wood logs, providing another level of safety and comfort.

The claimed apparatus is distinguishable from the Gerrard. Gerrard discloses a wire rack, the base of which is vastly different from claimed fireplace grate with a base having a platform and substantially enclosed compartment formed from non-moveable grate members and non-moveable cross members. The applicant therefore respectfully submits that Gerrard fails to disclose or suggest each and every limitation of independent claim 1 and thus, that claim is patentable over the Gerrard. Accordingly, the applicant respectfully requests withdrawal of the rejection and allowance of claim 1.

Claims 2, 7, and 8 depend directly and indirectly from claim 1 and thus include all of the limitations of claim 1. The applicant reiterates that claim 1 is patentable over the cited art for the reasons stated above, specifically the failure of the cited art to teach each and every limitation of the independent claims. Accordingly, dependent claims 2, 7, 8, 17, and 18 are believed patentable based on such dependency and further limitation within each claim.

Docket No. 1948-4635

Independent claims 11, 12, and 19 recites the disclosed invention in alternative terms. Specifically, the claims recite a fireplace grate including, in part, non-moveable grate members and non-moveable cross members that define a platform and a substantially enclosed compartment depending therefrom. Therefore, for the reasons stated in detail above, the applicant submits that these independent claims are patentable over Gerrard. Gerrard fails to disclose or suggest a platform for logs and a substantially enclosed compartment for a firelog depending from the platform, both the platform and compartment formed by non-moveable grate members and non-moveable cross members. Accordingly, the applicant respectfully requests withdrawal of the rejection of and allowance of these independent claims.

Based on claim dependency, the applicant also submits that claims 14-16 and 20-22 are also patentable over the cited reference. In particular, the applicant notes that Gerrard fails to teach or suggest a supporting member extending longitudinally across the bottom of the compartment which would serve to support the underside of firelog in the compartment. The supporting member prevents the firelog from falling through the grate members as the firelog loses rigidity and begins to fall apart, preventing flare-up. The Office has failed to indicate an corresponding element in the cited reference that would render claims directed to this supporting member obvious. Accordingly, the applicant specifically requests allowance of claims 15, 16, 17 and 21.

Claims 3, 4, 13, and 14 are rejected under 35 U.S.C. 103 as obvious over Gerrard in view of Kutchera (U.S. Patent No. 2,519,482). The Office asserts that Gerrard discloses all limitations of the claims except that the fireplace grate is explicitly "hinged" to the base, that the grate members include a U-shaped portion, and that the ceramic log is explicitly "hinged" to the frame. The Office further asserts that Kutchera teaches that the term "hinge" and "pivot" are understood to be equivalent terms for describing structure that permits grate sections to swing from a first position to a second position, and that Kutchera teaches grate sections 11 having bars 12 that are substantially U-shaped and serve as a fuel support.

Claims 3 and 4 depend from and include all of the limitations of claim 1. As such, these claims defined a fireplace grate including a frame having a platform and a substantially enclosed compartment formed from non-moveable grate members and cross members. Accordingly, the applicant reiterates the remarks above concerning the failure of Gerrard to disclose or suggest a frame with a platform and a substantially enclosed compartment. Kutchera also fails to disclose

Docket No. 1948-4635

or suggest these features, merely disclosing a fireplace grate in the form of a U-shaped basket having two hinged sections.

With respect to the assertion that Gerrard teaches a pivot means and Kutchera teaches a pivot means is equivalent to a hinge means, the applicant notes the Office's use of the term "pivot" only in its verb sense to describe motion about a point. Gerrard teaches a pivot means formed by one piece of low carbon wire rod bent as illustrated in Fig. 1. See column 2, line 8 - 15. Kutchera uses the term "pivot" only in describing the motion of the basket sections of the fireplace grate provided by a pivot flange or hinge. See column 3, line 34. The grate sections are pivotally mounted on one of the rods by provision of any desired number of depending flanges or ears secured to, or formed integral with, the outer bar of each section. See column 3, line 23 - 31. The present application discloses a different structure (see Figs. 2 and 4) than that of the cited references. It is respectfully submitted that claims 3 and 4 are patentable based on claim dependency and any further patentable limitation contained within each claim.

Independent claim 13 recites the disclosed fireplace grate invention in alternative terms as including a base formed by a plurality of non-moveable grate members and a plurality of non-moveable cross members that define a platform and a substantially enclosed compartment depending therefrom for supporting a firelog. The fireplace grate also includes a ceramic log hinged to the base with a first position that permits the insertion of the firelog onto the compartment of the base and a second position that encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform.

As stated above, the applicant submits that Gerrard and Kutchera, individually or in combination, fail to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment formed from non-moveable grate members and cross members. In addition, neither reference discloses a ceramic log hinged to a base of a fireplace grate. Gerrard discloses a wire rack having an upper frame that pivots to a lower section of the wire rack. A log is separately attached to the upper frame of the wire rack via fibre log support pins. Kutchera discloses a fireplace grate with hinged sections. In contrast, claim 13 recites a fireplace grate including a platform and a substantially enclosed compartment, and a ceramic log hinged to the base of the fireplace grate. Accordingly, based on claim dependency and the cited references lack of disclosure or suggestion directed to all features of the claimed invention, the applicants respectfully submit that claim 13 is patentable and request withdrawal of the rejection.

Docket No. 1948-4635

Claim 5 is rejected as obvious over Gerrard in view of Thompson (U.S. Patent No. 4,360,001). Claim 6 is rejected as obvious over Gerrard in view of Dorson et al. (U.S. Patent No. 4,692,168). Claim 9 is rejected as obvious over Gerrard in view of Fischer (U.S. Patent No. 4,838,781) and Kutchera. Claim 10 is rejected as obvious over Gerrard in view of Betenbaugh (U.S. Patent No. 4,257,392).

The applicant respectfully traverses these rejections and submits that claims 5, 6, 9, and 10 are not obvious over the disclosure of Gerrard in view of the cited secondary references. A claim is obvious in light of a combination of references if the combination of references teach or suggest all of the limitations recited by the claim. The applicant respectfully submits that these claims include claimed subject matter not found in and distinguishable from the disclosure of the cited references, individually or in combination. In addition, neither Gerrard, nor the cited secondary references disclose, suggest, or provide the motivation, individually or in combination, to one skilled in the art to combine the cited references in the manner suggested by the Office.

As explain throughout this Amendment and Response, Gerrard fails to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment formed from non-moveable grate members and cross members. Similarly, the secondary references, which are relied on for other disclosure, fail to disclose these features. Accordingly, the applicant respectfully submits that the claims are not obvious in light of the cited references since, individually or in combination, the cited references fail to disclose or suggest all of the features of applicant's claimed invention. The applicant respectfully requests withdrawal of these rejections and allowance of claims 5, 6, 9, and 10.

Docket No. 1948-4635

Conclusion

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested.. Should the Examiner disagree with the above remarks concerning the patentability of the claims as presented, the applicant respectfully requests the Examiner direct the applicant concerning claims the Examiner believes define the invention patentable over the cited references.

In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

Respectfully submitted,


David M. La Bruno Reg. No. 46,266

Dated: August 1, 2003

MORGAN & FINNEGAN, L.L.P.
345 Park Avenue
New York, New York 10154
(212) 758-4800
(212) 751-6849 (Fax)

FAX RECEIVED

AUG 01 2003

GROUP 3700